

AMENDED IN SENATE APRIL 14, 2010

SENATE BILL

No. 1210

Introduced by Senator Florez

(Principal coauthor: Assembly Member Monning)

(Coauthors: Assembly Members Coto and Torlakson)

February 18, 2010

An act to add Part 14.5 (commencing with Section 32600) to Division 2 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1210, as amended, Florez. Taxation: sweetened beverage ~~tax~~.
tax: Children's Health Promotion Fund.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would, on and after January 1, 2011, impose a tax at the rate of \$0.01 per teaspoon of caloric sweetener in bottled sweetened beverage or concentrate upon every person who makes the first sale in this state of bottled sweetened beverage or concentrate and on every person who uses or consumes, or places into a vending machine or retail stock, untaxed bottled sweetened beverage or concentrate, as provided. This bill would exempt from the tax the sale of bottled sweetened beverage that was made with tax-paid concentrate, as provided, and any sale, use, or consumption which the state is prohibited from taxing, as provided. The tax would be administered by the State Board of Equalization and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law.

The bill would require the board to deposit all taxes, penalties, and interest collected, less refund and administrative costs, in the Children's Health Promotion Fund, which this bill would create. This bill would require all moneys in the fund, upon appropriation by the Legislature, to be allocated to the State Department of Public Health for distribution of grants to eligible school districts for the purposes of statewide childhood obesity prevention activities and programs.

Because this bill would expand the application of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

This bill would make legislative findings and declarations relating to the consumption of sweetened beverages, childhood obesity, and dental disease.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would take effect immediately as a tax levy.

~~The Sales and Use Tax Law imposes a tax on the retail sale in this state of, and on the storage, use, or other consumption in this state of, tangible personal property based on a specified percentage of the gross receipts from the sale of, or sales price of, that property.~~

~~This bill would impose a tax upon every sweetened beverage manufacturer, concentrate manufacturer, or other person who makes the first sale in this state of a sweetened beverage or concentrate of a rate of \$0.01 per teaspoon of sugar placed into the sweetened beverage or equivalent amount of concentrate. The revenues collected from this tax would be deposited in the Childhood Obesity Fund, which the bill would create, for appropriation by the Legislature.~~

~~This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.~~

~~This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.~~

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. The Legislature finds and declares all of the~~
2 ~~following:~~

3 ~~(a) Over the past 30 years, the obesity rate in the United States~~
4 ~~has more than doubled. According to statistics compiled by the~~
5 ~~United States Centers for Disease Control, in 2008, 26.7 percent~~
6 ~~of the country's adult population was considered obese (body mass~~
7 ~~index (BMI) of 30 and above):~~

8 ~~(b) For children the increase in obesity has been even more~~
9 ~~dramatic, with the obesity rate among schoolage children ages 6~~
10 ~~to 11 years of age, inclusive, quadrupling over the last four decades.~~

11 ~~(c) Obese children are at least twice as likely as nonobese~~
12 ~~children to become obese adults.~~

13 ~~(d) The obesity epidemic has led to a dramatic increase in~~
14 ~~obesity-related health conditions, including, but not limited to,~~
15 ~~early onset of type 2 diabetes, asthma, heart disease, cancer, and~~
16 ~~strokes. These health conditions cost billions of dollars in health~~
17 ~~care costs and lost productivity. In an eight-year study, women~~
18 ~~who consumed one or more servings of sweetened beverages per~~
19 ~~day had twice the risk of developing type 2 diabetes and a 23~~
20 ~~percent higher risk of coronary heart disease than women who~~
21 ~~consumed less than one serving of sweetened beverages per month.~~

22 ~~(e) Overweight and obesity account for \$147 billion in health~~
23 ~~care costs nationally, or 9 percent of all medical spending, per~~
24 ~~year.~~

25 ~~(f) According to nutritional standards, sweetened beverages,~~
26 ~~including, but not limited to, soft drinks, energy drinks, sweet teas,~~
27 ~~and sports drinks offer little or no nutritional value but massive~~
28 ~~quantities of added sugars. For example, a 12-ounce serving of~~
29 ~~soda contains the equivalent of approximately 10 teaspoons of~~
30 ~~sugar; the United States Department of Agriculture recommends~~
31 ~~that a person eating a 2,200-calorie diet should consume no more~~
32 ~~than 12 teaspoons of refined sugar per day.~~

~~(g) Numerous studies strongly support a link between obesity and consumption of sweetened beverages, including, but not limited to, soft drinks, energy drinks, sweet teas, and sports drinks. Long-term studies have shown that women who increased their consumption of sweetened beverages for four years gained an average of 17.6 pounds, whereas women who decreased their consumption of sweetened beverages for four years gained only 6.2 pounds. The effect of sweetened beverage consumption in children is even more staggering. For every additional serving of sweetened beverage that a child consumes per day, the likelihood of the child becoming obese increases by 60 percent.~~

~~(h) Americans are drinking more sweetened beverages than ever before. From 1977 to 2002, Americans doubled the amount of sweetened beverages they consumed. Currently, children and adult Americans consume 172 and 175 calories respectively from sweetened beverages per day. Children and adolescents now consume 10 to 15 percent of their daily caloric intake from sweetened beverages.~~

~~(i) It is the intent of the Legislature, by adopting the Sweetened Beverage Tax Law and creating the Children's Health Promotion Fund, to diminish the human and economic costs of obesity. This act is intended to discourage excessive consumption of sweetened beverages by increasing the price of these products and by creating a dedicated revenue source for programs designed to prevent and treat childhood obesity and reduce the burden of attendant health conditions.~~

SECTION 1. (a) The Legislature finds and declares that over the past 30 years, there has been a substantial increase in the prevalence of obesity among adults in the United States. From the 1960s to the late 1970s, prevalence was relatively constant, with about 15 percent of the population classified as obese. After the 1970s these rates began to climb. By 2006, 23.3 percent of Americans were considered obese. In California, obesity rates have increased even more, rising from only 8.9 percent in 1984 to 24.3 percent in 2008. Although no group has escaped the epidemic, ethnic minorities and the poor are disproportionately affected.

(b) The Legislature further finds that the rates of overweight among children have also increased dramatically in recent decades. After being relatively constant from the 1960s to the

1 1970s, the prevalence of overweight has more than quadrupled
2 among children between six and 11 years of age and nearly tripled
3 among those between 12 and 19 years of age. Among California
4 children in grades 5, 7, and 9, 28 percent are overweight, including
5 34 percent of boys and 22 percent of girls, with rates in some
6 communities much higher.

7 (c) The Legislature further finds that the obesity epidemic is of
8 particular concern because it increases the risk of diabetes, heart
9 disease, certain types of cancer, arthritis, asthma, and breathing
10 problems. Depending on their level of obesity, from 60 percent to
11 over 80 percent of obese adults have type 2 diabetes, high blood
12 cholesterol, high blood pressure, or other related conditions. It
13 has been reported that up to 60 percent of obese children aged
14 five to 10 years of age have early signs of heart disease.

15 (d) The Legislature further finds that type 2 diabetes, previously
16 only seen among adults, is now increasing among children. If the
17 current obesity trends are not reversed, it is predicted that one in
18 three children and nearly one-half of Latino and African American
19 children born in the year 2000 will develop type 2 diabetes in their
20 lifetime. Research shows that overweight children have a much
21 greater chance of being obese as adults, with all the health risks
22 that entails.

23 (e) The Legislature further finds that overweight and obesity
24 account for \$147 billion in health care costs nationally, or 9
25 percent of all medical spending, per year.

26 (f) The Legislature further finds that in 2006 overweight and
27 obesity-related costs in California were estimated at almost \$21
28 billion.

29 (g) The Legislature further finds that there is overwhelming
30 evidence of the link between obesity and consumption of sweetened
31 beverages such as soft drinks, energy drinks, sweet teas, and sports
32 drinks. California adults who drink a soda or more per day are
33 27 percent more likely to be overweight or obese, regardless of
34 income or ethnicity.

35 (h) The Legislature further finds that according to nutritional
36 experts, sweetened beverages such as soft drinks, energy drinks,
37 sweet teas, and sports drinks offer little or no nutritional value but
38 massive quantities of added sugars. For example, a 20-ounce bottle
39 of soda contains the equivalent of approximately 17 teaspoons of
40 sugar. Yet, the American Heart Association recommends that

1 *Americans consume no more than five to nine teaspoons of sugar*
2 *per day.*

3 *(i) The Legislature further finds that research shows that almost*
4 *one-half of the extra calories Americans have been consuming*
5 *since the 1970s could come from soda, with the average American*
6 *drinking nearly 50 gallons of sweetened beverages a year, the*
7 *equivalent of 39 pounds of extra sugar every year.*

8 *(j) The Legislature further finds that Americans are drinking*
9 *more sweetened beverages than ever before. From 1977 to 2002,*
10 *Americans doubled the amount of sweetened beverages they*
11 *consumed. Currently, children and adult Americans consume 172*
12 *and 175 calories respectively from sweetened beverages a day.*
13 *Children and adolescents now consume 10 to 15 percent of their*
14 *daily caloric intake from sweetened beverages.*

15 *(k) The Legislature further finds that research shows that 41*
16 *percent of California children two to 11 years of age and 62*
17 *percent of California teens 12 to 17 years of age drink soda daily*
18 *and for every additional serving of sweetened beverage that a child*
19 *consumes a day, the likelihood of the child becoming obese*
20 *increases by 60 percent.*

21 *(l) Dental caries (tooth decay) is the most common chronic*
22 *childhood disease, experienced by more than two-thirds of*
23 *California's children. Children who frequently or excessively*
24 *consume beverages high in sugar are at increased risk for dental*
25 *caries. Untreated dental caries can lead to pain, infection, tooth*
26 *loss and in severe cases, even death. It can slow normal growth*
27 *and development by restricting nutritional intake. Children who*
28 *are missing teeth may have chewing problems that limit their food*
29 *choices and result in nutritionally inadequate diets.*

30 *(m) It is the intent of the Legislature, by adopting the Sweetened*
31 *Beverage Tax Law and creating the Children's Health Promotion*
32 *Fund, to diminish the human and economic costs of obesity and*
33 *dental disease. This act is intended to discourage excessive*
34 *consumption of sweetened beverages by increasing the price of*
35 *these products and by creating a dedicated revenue source for*
36 *programs designed to prevent and treat childhood obesity and*
37 *dental disease and reduce the burden of attendant health*
38 *conditions.*

39 SEC. 2. Part 14.5 (commencing with Section 32600) is added
40 to Division 2 of the Revenue and Taxation Code, to read:

PART 14.5. SWEETENED BEVERAGE TAX LAW

32600. This part shall be known and may be cited as the Sweetened Beverage Tax Law.

32601. For purposes of this part:

(a) “Beverage container” means any closed or sealed glass, metal, paper, plastic, or any other type of container regardless of the size or shape of the container.

(b) ~~“Bottled soft drink”~~ *sweetened beverage*” means a sweetened beverage contained in a beverage container.

(c) *“Caloric sweetener” means any caloric substance suitable for human consumption that humans perceive as sweet and includes, without limitation, sucrose, fructose, including high fructose corn sweetener, glucose, other sugars, and fruit juice concentrates. For purposes of this subdivision, “caloric” means a substance that adds calories to the diet of a person who consumes that substance.*

~~(e)~~

(d) “Concentrate” means a sweetened beverage syrup, simple syrup, powder, or base product for mixing, compounding, or making sweetened beverages.

~~(d)~~

(e) “Concentrate manufacturer” means any person that manufactures concentrate for sale to distributors, dealers, consumers, or others in this state.

(f) *“Medical food” means medical food as defined in Section 109971 of the Health and Safety Code.*

~~(e)~~

(g) “Milk” means natural liquid milk, regardless of animal source or butterfat content, natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content, or dehydrated natural milk, whether or not reconstituted.

~~(f)~~

(h) “Natural fruit juice” means the original liquid resulting from the pressing of fruit, the liquid resulting from the reconstitution of natural fruit juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural fruit juice.

~~(g)~~

(i) “Natural vegetable juice” means the original liquid resulting from the pressing of vegetables, the liquid resulting from the

1 reconstitution of natural vegetable juice concentrate, or the liquid
2 resulting from the restoration of water to dehydrated natural
3 vegetable juice.

4 ~~(h)~~

5 (j) “Nonalcoholic beverage” means all beverages not subject to
6 tax under Part 14 (commencing with Section 32001).

7 ~~(i)~~

8 (k) (1) “Powder” or “base product” means a mixture of
9 ingredients in other than liquid form, used in making, mixing, or
10 compounding sweetened beverages by mixing this product with
11 water, ice, syrup, or simple syrup, fruits, vegetables, fruit juice,
12 vegetable juice, or any other product suitable to make a sweetened
13 beverage.

14 (2) “Powder” or “base product” does not include any of the
15 following:

16 (A) Any product sold in powder or other nonliquid mixture form
17 that is solely used in preparing coffee or tea.

18 (B) Any product sold in powder form for consumption by infants
19 and which is commonly referred to as “infant formula.”

20 (C) Any product sold in powder form for use for weight
21 reduction.

22 (D) Any product containing milk or milk products.

23 (E) Any frozen concentrate or freeze-dried concentrate to which
24 only water is added to produce a sweetened beverage containing
25 more than 10 percent natural fruit juice or more than 10 percent
26 natural vegetable juice.

27 (F) Any powder or other base product that is sold and used for
28 the purpose of an individual consumer mixing a sweetened
29 beverage.

30 ~~(j)~~

31 (l) “Sale” means the transfer of title or possession for
32 consideration in any manner or by any means whatever.

33 ~~(k)~~

34 (m) “Simple syrup” means a mixture of sugar and water.

35 ~~(l)~~

36 (n) (1) “Sweetened beverage” means any sweetened
37 nonalcoholic beverage sold for human consumption including, but
38 not limited to, the following: soda water, ginger ale, root beer, all
39 beverages commonly referred to as cola, lime, lemon, lemon-lime,
40 and other flavored beverages, including any fruit or vegetable

1 beverage containing 10 percent or less natural fruit juice or natural
2 vegetable juice, and all other drinks and beverages commonly
3 referred to as “soda,” “soda pop,” and “soft drinks.”

4 (2) “Sweetened beverage” does not include any of the following:

5 (A) Any nonalcoholic beverage sweetened entirely with artificial
6 sweeteners that do not add calories to the beverage.

7 (B) Any product sold in liquid form for consumption by infants,
8 which is commonly referred to as “infant formula.”

9 (C) Any product sold in liquid form for use for weight reduction.

10 (D) Water, to which no natural caloric sweeteners have been
11 added.

12 (E) Any product containing milk or milk products.

13 (F) Medical food.

14 (m)

15 (o) “Sweetened beverage manufacturer” means any person who
16 bottles, cans, or otherwise fills bottled sweetened beverages, or
17 imports bottled sweetened beverages.

18 (n)

19 (p) “Syrup” means the liquid mixture of ingredients used in
20 making, or mixing, compounding sweetened beverages by mixing
21 the syrup with water, simple syrup, ice, fruits, vegetables, fruit
22 juice, vegetable juice, or any other product suitable to make a
23 sweetened beverage.

24 (q) “Teaspoon” means 4.2 grams.

25 ~~32602. A tax is hereby imposed upon every sweetened beverage~~
26 ~~manufacturer or concentrate manufacturer, or other person who~~
27 ~~makes the first sale in this state of a sweetened beverage or~~
28 ~~concentrate at a rate of \$0.01 per teaspoon of sugar placed into the~~
29 ~~sweetened beverage or equivalent amount of concentrate.~~

30 ~~32605. (a) The board shall collect the tax pursuant to the Fee~~
31 ~~Collection Procedures Law Part 30 (commencing with Section~~
32 ~~55001) of Division 2 of the Revenue and Taxation Code. For~~
33 ~~purposes of administration of the tax pursuant to this part,~~
34 ~~references in the Fee Collection Procedures Law to “feepayer”~~
35 ~~and “fee” shall include “taxpayer” and “tax.”~~

36 ~~(b) The tax imposed by this part shall be due and payable to the~~
37 ~~board quarterly on or before the last day of the month next~~
38 ~~succeeding each quarterly period.~~

39 ~~(c) The board may adopt rules and regulations for the proper~~
40 ~~administration of this tax.~~

1 ~~32606. There is hereby created a trust fund in the State Treasury~~
2 ~~called the Children's Health Promotion Fund. The Children's~~
3 ~~Health Promotion Fund shall consist of moneys collected pursuant~~
4 ~~to the taxes imposed by this part. All costs to implement this part~~
5 ~~shall be paid from moneys deposited in the Children's Health~~
6 ~~Promotion Fund. All revenue to the state derived from the tax on~~
7 ~~sweetened beverages pursuant to this part, shall be deposited into~~
8 ~~this fund.~~

9 ~~32607. (a) All moneys in the Children's Health Promotion~~
10 ~~Fund shall, upon appropriation by the Legislature, be allocated for~~
11 ~~the purposes of statewide childhood obesity prevention activities~~
12 ~~and programs.~~

13 ~~(b) The State Department of Public Health shall adopt rules and~~
14 ~~regulations, and provide procedural measures to implement this~~
15 ~~section.~~

16 ~~SEC. 3. This bill would take effect immediately as a tax levy,~~
17 ~~but its operative date would depend on its effective date.~~

18 ~~32602. (a) On and after January 1, 2011, a tax is hereby~~
19 ~~imposed at the rate of one cent (\$0.01) per teaspoon of caloric~~
20 ~~sweetener in a bottled sweetened beverage on every person who~~
21 ~~does the following:~~

22 ~~(1) Makes the first sale in this state of a bottled sweetened~~
23 ~~beverage.~~

24 ~~(2) Uses or consumes an untaxed bottled sweetened beverage~~
25 ~~in this state.~~

26 ~~(3) Places in this state an untaxed bottled sweetened beverage~~
27 ~~in a vending machine or in retail stock for the purpose of selling~~
28 ~~the bottled sweetened beverage to consumers.~~

29 ~~(b) On and after January 1, 2011, a tax is hereby imposed at~~
30 ~~the rate of one cent (\$0.01) per teaspoon of caloric sweetener in~~
31 ~~the concentrate on every person who does the following:~~

32 ~~(1) Makes the first sale in this state of concentrate.~~

33 ~~(2) Uses or consumes untaxed concentrate in this state.~~

34 ~~(3) Places in this state untaxed concentrate in a vending machine~~
35 ~~or retail stock for the purpose of selling a sweetened beverage to~~
36 ~~consumers.~~

37 ~~(c) There is exempt from the tax imposed under subdivision (a),~~
38 ~~the sale of bottled sweetened beverage, provided that the bottled~~
39 ~~sweetened beverage was made with concentrate on which the tax~~
40 ~~imposed under subdivision (b) was paid.~~

1 32603. *There is exempt from the tax imposed by this part, the*
2 *sale, use, or consumption in this state of bottled sweetened*
3 *beverages or concentrates where the state is prohibited from taxing*
4 *that sale, use, or consumption under the Constitution or laws of*
5 *the United States or under the Constitution of this state.*

6 32604. *The board shall administer and collect the tax imposed*
7 *by this part pursuant to the Fee Collection Procedures Law (Part*
8 *30 (commencing with Section 55001)). For purposes of this part,*
9 *the references in the Fee Collection Procedures Law to “fee” shall*
10 *include the tax imposed by this part and references to “feepayer”*
11 *shall include a person required to pay the tax imposed by this part.*

12 32605. *Each person required to pay the tax shall prepare and*
13 *file with the board a return in the form prescribed by the board*
14 *containing information as the board deems necessary or*
15 *appropriate for the proper administration of this part. The return*
16 *shall be filed on or before the last day of the calendar month*
17 *following the calendar quarter to which it relates, together with*
18 *a remittance payable to the board for the amount of tax due for*
19 *that period.*

20 32606. *The board may prescribe those forms and reporting*
21 *requirements as are necessary to implement the tax, including, but*
22 *not limited to, information regarding the total amount of caloric*
23 *sweetener, the total amount of bottled sweetened beverages sold,*
24 *and the amount of tax due.*

25 32607. *Every payment on a delinquent tax owed pursuant to*
26 *this part shall be applied as follows:*

27 (a) *First, to any interest due on the tax.*

28 (b) *Second, to any penalty imposed by this part.*

29 (c) *Third, the balance, if any, to the tax due.*

30 32608. *The board shall, upon appropriation, be reimbursed*
31 *for expenses incurred in the administration and collection of the*
32 *tax imposed by this part.*

33 32609. (a) *There is hereby created a trust fund in the State*
34 *Treasury called the Children’s Health Promotion Fund. The*
35 *Children’s Health Promotion Fund shall consist of all taxes,*
36 *interest, penalties, and other amounts collected pursuant to this*
37 *part, less refunds and reimbursement to the board for expenses*
38 *incurred in the administration and collection of the tax.*

39 (b) *All moneys in the Children’s Health Promotion Fund shall,*
40 *upon appropriation by the Legislature, be allocated for the*

1 *purposes of statewide childhood obesity prevention activities and*
2 *programs.*

3 *SEC. 3. No reimbursement is required by this act pursuant to*
4 *Section 6 of Article XIII B of the California Constitution because*
5 *the only costs that may be incurred by a local agency or school*
6 *district will be incurred because this act creates a new crime or*
7 *infraction, eliminates a crime or infraction, or changes the penalty*
8 *for a crime or infraction, within the meaning of Section 17556 of*
9 *the Government Code, or changes the definition of a crime within*
10 *the meaning of Section 6 of Article XIII B of the California*
11 *Constitution.*

12 *SEC. 4. This act provides for a tax levy within the meaning of*
13 *Article IV of the Constitution and shall go into immediate effect.*